

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



JUDGE JONES

----- x
SAMANTHA SOMAI, infant by CHRISTINA
RIVERA, as mother and natural guardian and
CHRISTINA RIVERA, individually,

Plaintiffs,

-against-

MORRIS HEIGHTS HEALTH CENTER,
INC., d/b/a MORRIS HEIGHTS HEALTH
CENTER, and WANDA McCOY, M.D.,

Defendants.
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NOTICE OF REMOVAL

08 Civ. CV 3151

from the Supreme Court of the
State of New York, County of Bronx,
Index No. 301569/07

Defendants Morris Heights Health Center, Inc., d/b/a Morris Heights Health Center
("Morris Heights"), and Wanda McCoy, M.D. ("Dr. McCoy") (collectively, the "Defendants"),
by their attorney, Michael J. Garcia, United States Attorney for the Southern District of New
York, hereby remove the above-captioned action to the United States District Court for the
Southern District of New York.

The grounds for removal are as follows:

1. On or about October 5, 2007, infant-plaintiff Samantha Somai, by her mother and
natural guardian Christina Rivera (collectively "Plaintiffs"), commenced an action against Morris

Heights and Dr. McCoy in the Supreme Court of the State of New York, County of Bronx, by filing a Summons and Verified Complaint under Index Number 301569/07. A true and correct copy of the Summons and Verified Complaint is attached hereto as Exhibit A.

2. In their Verified Complaint, Plaintiffs allege that “[f]rom on or about April 15, 2005, and thereafter, infant-Plaintiff SAMANTHA SOMAI, by CHRISTINA RIVERA, as mother and natural guardian, sought the professional care of Defendant MORRIS HEIGHTS HEALTH CENTER, INC. D/B/A MORRIS HEIGHTS HEALTH CENTER for certain medical complaints from which she was suffering, and this defendant, its agents, servants and employees rendered medical care, diagnosis treatment and services to her.” (Compl. ¶ 12).

3. Pursuant to section 224 of the Public Health Service Act, as amended by the Federally Supported Health Centers Act of 1995, 42 U.S.C. § 201 *et seq.*, Morris Heights and its employees, including Dr. McCoy, were deemed to be employees of the United States Government effective June 23, 1996, and that status has continued uninterrupted since that date. *See* 42 U.S.C. § 233(a), (g)-(n). Accordingly, the Defendants are eligible for Federal Tort Claims Act coverage in connection with any allegations regarding medical care provided to infant-plaintiff Samantha Somai by the Defendants on or after April 15, 2005.

4. The Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1402(b), 2401(b) and 2671-2680, provides the exclusive remedy with respect to Plaintiffs’ claims against the Defendants. *See* 42 U.S.C. § 233(a).

5. Pursuant to 42 U.S.C. § 233(c) and 28 U.S.C. § 2679(d)(2), this action may be removed to this Court because: (i) trial has not yet been had of this action; and (ii) this is a civil action brought against parties deemed to be employees of the United States Government for

purposes of the FTCA. A true and correct copy of the Certification of the Michael J. Garcia, United States Attorney for the Southern District of New York, dated March 25, 2008, certifying that the Defendants are employees of the United States for purpose of Plaintiffs' claims against them, is attached hereto as Exhibit B.

Dated: New York, New York
March 28, 2008

Respectfully submitted,

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York

By:


TOMOKO ONOZAWA (TO-8694)

Assistant United States Attorney
86 Chambers Street, Third Floor
New York, New York 10007
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TO: VIA FEDERAL EXPRESS

Jason Shapiro, Esq.
Shapiro Law Offices
3205 Grand Concourse, Suite 1
Bronx, New York 10468
Attorney for Plaintiffs

Tracey A. Reiser-Pertoso, Esq.
Kaufman Borgeest & Ryan LLP
200 Summit Lake Drive
Valhalla, New York 10595
*Attorney for Morris Heights Health Center, Inc.
d/b/a Morris Heights Health Center and
Wanda McCoy, M.D.*

EXHIBIT A

10/31/2007 10/31/2007 14:30 02:57PM Received 8490822 CLAC72894014014 Pg 5/14

NO. 483 085

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

SAMANTHA SOMAL, Infant, by CHRISTINA RIVERA, as
mother and natural guardian and CHRISTINA RIVERA,
individually,

Plaintiffs,

-against-

MORRIS HEIGHTS HEALTH CENTER, INC., MORRIS
HEIGHTS HEALTH CENTER, AND WANDA McCODY,
M.D.,

Defendants.

Index No.:
Date Purchased:

SUMMONS

Plaintiff designates Bronx
County as the place of trial.

The basis of venue is:
Plaintiffs' Residence

Plaintiffs reside at:
316 E. 163rd Street
Bronx, NY 10451
County of Bronx

To the above named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within twenty days after the service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Bronx, New York
September 20, 2007

Jason Shapiro
Shapiro Law Offices
Attorneys for Plaintiff
3205 Grand Concourse, Suite 1
Bronx, NY 10468
718-295-7000

#0127 P.002 /011

CREDENTIAL DEPT

001-09-2007 13:14 FROM: CHUBB CLAIMS

10/31/2007 10/31/2007 02:57PM Received 8490822 CLA472894014014 Pg 6/14

NO. 403 005

TO: MORRIS HEIGHTS HEALTH CENTER
85 W. BURNSIDE AVENUE
BRONX, NY 10453

-OR-

ROBERT P. HORSODY, P.C.
909 THIRD AVENUE, 17TH FL
NEW YORK, NY 10022

WANDA McCOY, M.D.
85 W. BURNSIDE AVENUE
BRONX, NY 10453

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NO. 403

007

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No.:

Date Purchased:

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SAMANTHA SOMAI, Infant, by CHRISTINA RIVERA, as
mother and natural guardian and CHRISTINA RIVERA,
individually,

VERIFIED COMPLAINT

Plaintiffs,

-against-

MORRIS HEIGHTS HEALTH CENTER, INC. D/B/A
MORRIS HEIGHTS HEALTH CENTER, AND WANDA
McCOY, M.D.,

Defendants.
-----X

Plaintiffs, by their attorneys, SHAPIRO LAW OFFICES, complaining of the Defendants,
respectfully alleges, upon information and belief as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. At the time of the commencement of this action, Plaintiffs were, and still are residents of the County of Bronx, State of New York.
2. At all times mentioned herein, Defendant MORRIS HEIGHTS HEALTH CENTER INC. D/B/A MORRIS HEIGHTS HEALTH CENTER was a domestic corporation duly organized and existing under, and by virtue of, the laws of the State of New York.
3. At all times mentioned herein, the principal place of business of Defendant MORRIS HEIGHTS HEALTH CENTER INC. D/B/A MORRIS HEIGHTS HEALTH CENTER was located in the State of New York, County of Bronx.

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4. At all times mentioned herein, the principal place of business of Defendant **WANDA McCOY, M.D.** was, as still is, a resident of the County of Bronx, State of New York.

5. At all times mentioned herein **MORRIS HEIGHTS HEALTH CENTER, INC.** was, and still is, the owner of a health-care facility known as **MORRIS HEIGHTS HEALTH CENTER**.

6. At all times mentioned herein, Defendant **MORRIS HEIGHTS HEALTH CENTER INC. D/B/A MORRIS HEIGHTS HEALTH CENTER** owned, operated, controlled, and managed a health care facility pursuant to the laws of the State of New York for the care of the sick, known as **MORRIS HEIGHTS HEALTH CENTER** located at 85 W. Burnside Avenue, Bronx, New York which provided personnel, including doctors, nurses, attendants and others for the care and treatment of its patients and which held itself out to the public as furnishing treatment facilities where patients, including the infant-Plaintiff **SAMANTHA SOMAI**, could be treated for various ailments.

7. At all times mentioned herein, Defendant **WANDA McCOY, M.D.** was a physician duly licensed to practice medicine in the State of New York.

8. At all times mentioned herein, Defendant **WANDA McCOY, M.D.** held herself out to the public, and more particularly to the infant-plaintiff, **SAMANTHA SOMAI**, as a physician offering professional services, as possessing the proper degree of learning and skill necessary to render medical services in accordance with good and accepted medical practice in that she undertook to use reasonable care and diligence in the treatment of the infant-plaintiff, **SAMANTHA SOMAI**.

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9. At all times mentioned herein, Defendant WANDA McCOY, M.D. represented that she was competent to perform and render all the medical care, treatment, services, and advice required by the infant-Plaintiff.

10. At all times mentioned herein, Defendant WANDA McCOY, M.D. was an employee of Defendant MORRIS HEIGHTS HEALTH CENTER, INC., D/B/A MORRIS HEIGHTS HEALTH CENTER.

11. At all times mentioned herein, Defendants MORRIS HEIGHTS HEALTH CENTER, INC., D/B/A MORRIS HEIGHTS HEALTH CENTER and WANDA McCOY, M.D. stood in such a relationship with each other in their care and treatment of infant-Plaintiff SAMANTHA SOMAI as to make each liable for the acts and omissions of the other.

12. From on or about April 15, 2005, and thereafter, infant-Plaintiff SAMANTHA SOMAI, by CHRISTINA RIVERA, as mother and natural guardian, sought the professional care of Defendant MORRIS HEIGHTS HEALTH CENTER, INC., D/B/A MORRIS HEIGHTS HEALTH CENTER for certain medical complaints from which she was suffering, and this defendant, its agents, servants and employees rendered medical care, diagnosis, treatment and services to her.

13. From on or about April 15, 2005, and thereafter, infant-Plaintiff SAMANTHA SOMAI, by CHRISTINA RIVERA, as mother and natural guardian sought the professional care of Defendant WANDA McCOY, M.D. for certain medical complaints from which she was suffering, and this defendant, its agents, servants and employees rendered medical care, diagnosis, treatment and services to her.

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14. Defendants, their agents, servants, partners and/or employees were careless, negligent and unskilled in the treatment and services rendered to the infant-plaintiff SAMANTHA SOMAI; in that they negligently and carelessly departed from good and accepted standards of medical practice and procedures in connection with the medical care rendered to and on behalf of plaintiff SAMANTHA SOMAI; in that they failed to exercise that degree of care, caution, prudence, skill, ability, professional knowledge and training generally utilized by physicians and medical care facilities in the community; failed to recognize and appreciate the signs and symptoms of plaintiff's condition; failed to order appropriate studies, failed to obtain appropriate and necessary tissue samples, failed to render a proper and timely diagnosis of plaintiff's condition; failed to immediately render assistance to plaintiff when his condition so required; failed to properly and promptly diagnose plaintiff's condition.

15. By reason of the above, infant-Plaintiff SAMANTHA SOMAI has sustained great pain, agony, injury, suffering, disability, and hospitalization, as well as mental anguish and emotional distress.

16. By reason of the above, infant-Plaintiff SAMANTHA SOMAI has sustained damages, both general and special, in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

17. The limitations on liability set forth in CPLR §1600 et. Seq. do not apply.

18. The limitations on liability set forth in CPLR §1600 et. Seq. do not apply by reason of one or more of the exemptions set forth therein in CPLR §1602.

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NO. 403

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AS AND FOR A SECOND CAUSE OF ACTION

19. Plaintiffs repeat and reallege each and every allegation set forth above with the same force and effect as though set forth herein at length.

20. Defendants, their agents, servants and employees, failed to inform infant-Plaintiff SAMANTHA SOMAI, by CHRISTINA RIVERA, as mother and natural guardian of SAMANTHA SOMAI of the reasonably foreseeable risks and benefits of, and alternatives to, the treatment proposed and rendered, which would have been disclosed by reasonable medical practitioners in similar circumstances, in consequence of which Defendants failed to obtain an informed consent thereto.

21. A reasonably prudent person in Plaintiff's position would not have undergone the treatment and diagnosis rendered herein if she had been fully informed.

22. The lack of informed consent alleged herein is a proximate cause of the injuries, conditions and disabilities for which recovery is sought.

23. By reason of the above, infant-Plaintiff SAMANTHA SOMAI has sustained great pain, agony, injury, suffering, disability, and hospitalization, as well as mental anguish and emotional distress.

24. By reason of the above, infant-Plaintiff SAMANTHA SOMAI has sustained damages, both general and special, in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

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03/28/2008 13:15 FROM: CHUBB CLAIMS

10/31/2007 10/31/ / 02:57PM Received 8490822 CLA472894014014 Pg 12/14
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NO. 483 012

AS AND FOR A THIRD CAUSE OF ACTION

25. Plaintiff's repeat and reallege each and every allegation set forth above with the same force and effect as though set forth herein at length.

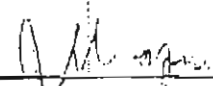
26. That at all times hereinafter mentioned, Plaintiff CHRISTINA RIVERA is the mother and natural guardian of the infant-plaintiff SAMANTHA SOMAI and as such was entitled to the society, services and consortium of SAMANTHA SOMAI.

27. That by reason of the foregoing, plaintiff CHRISTINA RIVERA was deprived of the society, services and consortium of the infant plaintiff SAMANTHA SOMAI and shall forever be deprived of said society, services and consortium.

28. By reason of the above, CHRISTINA RIVERA has sustained damages, both general and special, in a sum that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, Plaintiffs demand judgment against the Defendants herein on all causes of action, in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with the costs and disbursements of this action.

Dated: Bronx, New York
September 19, 2007


Jason Shapiro
Shapiro Law Offices
Attorneys for Plaintiff
3205 Grand Concourse, Suite 1
Bronx, NY 10468
718-295-7000

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CONFIDENTIAL DEPT

CONFIDENTIAL DEPT

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NO. 483 013

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
SAMANTHA SOMAI, infant, by CHRISTINA RIVERA, as
mother and natural guardian and CHRISTINA RIVERA,
individually,

Plaintiffs,

-against-

MORRIS HEIGHTS HEALTH CENTER, INC., MORRIS
HEIGHTS HEALTH CENTER AND WANDA McCOY,
M.D.,

Defendants.
-----X

CERTIFICATE OF
MERIT PURSUANT
TO CPLR §2016

Index No.:

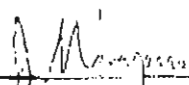
Date Purchased:

JASON SHAPIRO, an attorney duly admitted to practice law before the Courts of the State of
New York, hereby affirms, pursuant to CPLR §2016:

1. I am a member of Shapiro Law Offices.

2. I have reviewed the facts of this case and have consulted with at least one
physician who is licensed to practice in this State, or any other State, and I reasonably believe that
said physician is knowledgeable as to relevant issues involved in this particular action, and I have
concluded on the basis of such review and consultation that there is a reasonable basis for the
commencement of this action.

Dated: Bronx, New York
September 20, 2007



Jason Shapiro
Shapiro Law Offices
Attorneys for Plaintiff
3205 Grand Concourse, Suite 1
Bronx, NY 10468
718-293-7000

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Index No.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX.

SAMANATHA SOMAI, infant, by CHRISTINA RIVERA, as mother and natural guardian and
CHRISTINA RIVERA, individually,

Plaintiffs,

-against-

MORRIS HEIGHTS HEALTH CENTER, INC., MORRIS HEIGHTS HEALTH CENTER AND
WANDA MCCOY, M.D.,

Defendants.

SUMMONS AND VERIFIED COMPLAINT

SHAPIRO LAW OFFICES
Attorneys for Plaintiff
3205 Grand Concourse, Suite 1
Bronx, NY 10468
718-295-7700

ATTORNEY CERTIFICATION

The undersigned, an Attorney admitted to
practice in the Courts of New York State,
certifies that, upon information, belief
and reasonable inquiry, the contentions
contained in the above-referenced document(s)
are not frivolous.

JASON SHAPIRO, ESQ.

To:
Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

#0127 P.011 /011

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EXHIBIT B

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
By: TOMOKO ONOZAWA (TO-8694)
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tomoko.onozawa@usdoj.gov

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SAMANTHA SOMAI, et al.,
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Plaintiffs, :
:
v. :
:
MORRIS HEIGHTS HEALTH CENTER, :
INC. d/b/a MORRIS HEIGHTS :
HEALTH CENTER, AND WANDA :
McCOY, M.D., :
:
Defendants. :
:
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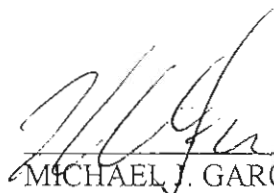
CERTIFICATION

08 Civ. 3151

Index No. 301569/07
Supreme Court of New York, Bronx County

I, MICHAEL J. GARCIA, the United States Attorney for the Southern District of New York, pursuant to the provisions of 28 U.S.C. § 2679(d), and by virtue of the authority vested in me by the Attorney General under 28 C.F.R. § 15.4, hereby certify, on the information now available, that defendants Morris Heights Health Center and Wanda McCoy, M.D. were acting within the scope of employment at the time of the incident out of which plaintiffs' claim arose.

Dated: New York, New York
March 25, 2008


MICHAEL J. GARCIA *John E.*
United States Attorney
Southern District of New York